IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

JULIA M. BACKMAN, individually and on Behalf of the ESTATE OF DANIEL VERNON BACKMAN, and as Next Fried to KELLY KEIKO VALENE BACKMAN and JODI LEIGH YACHIYO BACKMAN, Minors,

Plaintiffs,

vs. CIVIL NO. 04-00348(KSC)

RSKCO SERVICES, INC., a Illinois corporation; JOHN DOES 1-10; JANE DOES 1-10; DOE PARTNERSHIPS 1-10; DOE CORPORATIONS 1-10; DOE LIMITED LIABILITY ENTITIES 1-10; DOE "NON-PROFIT" CORPORATIONS 1-10; and DOE GOVERNMENTAL ENTITIES 1-10,

Defendants.

DEPOSITION OF JON F. GRAHAM, M.D.

Taken on behalf of the Defendant, RSKCO Services, Inc., at Queens Physicians Office Building II, 1329 Lusitana Street, Suite 301, Honolulu, Hawaii, commencing at 2:44 p.m., on October 6, 2005, pursuant to Notice.

BEFORE: SHARON H. COSKEY, CSR NO. 359

Certified Shorthand Reporter

A. Yes.
Q. And your recommendation was to do repeat X-rays and MRIs and CT scans. Is that right?
A. That's correct.
Q. In your file, I have it as page 29, which is a request dated November 14, 2001, for an X-ray of Mr. Backman's spine. Is that what this request is for?
A. Yeah. Actually, it's written L-spine, but it's supposed to mean C-spine.
Q. And on the next page, page 30, is Dr. Soong's radiology report interpreting that cervical spine X-ray?
A. Yes.
Q. Did you review the film yourself of this November 14, 2001 X-ray?
A. I'm not sure. Usually what happens is when we get these images -- because I was asking, trying to get more, more data. So these -- the report went through my desk.
I saw the report, but I would have waited until he came back to see me and then had that with the MRI and the CT, whatever other studies that we had requested all together, and gone over everything with the patient.

Q. So as you sit here today, you don't recall actually reviewing the X-ray films, because Mr. Backman, as I understand, never came back to you after that November 14th visit?
A. That's right.
Q. On the next page, page 31, is a December 5, 2001 CT request. Is that right? Excuse me. It's dated November 19, 2001, but performed on December 5, 2001?
A. Yes.
Q. Is that typically how long it takes to schedule a CT scan? Because the request went in on November 19, but, apparently, it wasn't done until December 5th.
A. It varies, but usually a one- to two-week delay for a routine study.
Q. And the same question with the CT films. There was a report, that's on page 33 through 34 of your records, by Dr. Song. Did you review the actual CT films to determine whether Dr. Song interpreted the films in agreement with your review?
A. I don't remember reviewing these. They would have been reviewed with the patient. I saw the report, but I would have shown the patient all the images.

Q. On page 38 of your report is the MRI request to Queen's Medical Center. That's dated November 19, 2001.
At the bottom, I notice that there was a stamp that said "Faxed November 29, 2001." I was wondering whether you knew what that referred to?
A. Which one? What page?
Q. Thirty-eight.
A. Oh, this one?
Q. Yes.
A. That would have been that the request was faxed to Queen's. So, in other words, fill this out, then the nurse faxes it, and that's the date that it was faxed.
Q. Do you know why there was a delay of about 10 days from the date you had signed the request until it was actually faxed to Queen's?
A. I'm not, not real sure why.
Q. And the same question with regard to the MRI films. These films were interpreted by Dr. Cieply. Did you have a chance to review the MRI films yourself?
A. No, not that I can recall.
Q. Based on the actual radiology reports by Dr. Song, Soong and Cieply, would you have

recommended surgery at the C4-5 level?
A. Not sure, because I think when I saw him last, his change -- his clinical exam was more compatible, according to my note, something going on at a different level in addition. So that's why I ordered the extra studies.
So I would have had to have gone back, seen the patient, gone over all the images again and then, based on those, made a recommendation as to what kind of surgery he would need.
Q. The last time you actually examined Mr. Backman was November 14, 2001. What complaints of pain did he have and what level did you believe was involved with that pain?
A. Let's see. What page is that on?
Q. Well, your handwritten note is page 15, but your dictated consultation report is page 18.
A. I mentioned chronic L-5 radiculopathy on the left with recent onset of -- C-5, I'm sorry, chronic C-5 radiculopathy with possible recent onset of C3-4 radiculopathy. So that's a change, implying that there could be another level that's involved, like C3-4.
Q. So would you have been then recommending surgery at the C4-5 and also the C3-4?

A. Hard to say without seeing the patient and looking at the images and trying to correlate them.
Q. So what would have occurred after the December 2001 MRI was completed was that Mr. Backman would come and see you; you would perform another examination and go over the radiology studies with him?
A. Right, and then try to correlate with some of the radiology findings with what I see in the patient.
Q. So as we sit here today, because you were not able to re-examine Mr. Backman after the December 2001 MRI, is it speculative for you to tell us whether or not you would have recommended any surgery at all for him?
A. Hard to say. I would have had to re-examine him and determine whether or not he needed something or not. I would say probably he would have needed surgery. Which levels that would have been, that's speculative.
Q. Would reviewing the December 2001 MRI films assist you in answering the question about whether you would have recommended surgery or is the physical exam that important that you needed to do one?
A. Yeah, you would need both. I can't tell

you how many times I operate on people that have got disease at three or four levels, and I just operate on one level and sort of ignore all the other ones, and they do fine. So you have to really correlate both.
Q. So without one or the other, you just can't, as you sit here today, you can't tell us that, yes, I would have told him that he needed surgery at C4-5 or any other level?
A. That's correct. I was -- my evaluation here looks like I was suspicious enough for another level to, you know, to warrant reordering all the studies to kind of, basically, sort of, sort of starting over, to reassess him and start over and look at things in a new light to see what would be the best thing.
Q. From your November 14, 2001 examination of Mr. Backman, could you tell whether his pain had increased since he last saw you almost a year before, in December of 2000?
A. According to my notes, it says that the patient continues to have neck pain and arm pain on the left with paresthesia in the ulnar aspect of the left hand.
There's no entry saying whether it's worse

or better. I have to assume everything remained about the same.
Q. Did you have any discussions with Dr. Otaka concerning any concerns that Dr. Otaka may have that Mr. Backman may be abusing his narcotic medications?
A. Not that I can remember. I mean, he was a tough patient, no question. That's why Dr. Otaka called me to help, try to help him out with his management.
Q. During this time around, I believe it's October/November/December 2001, Dr. Otaka's records reflected he was trying to wean Mr. Backman off of Oxycontin by using methadone.
And, actually, I was wondering whether he needed to be weaned off Oxycontin before surgery could be performed?
A. Usually what we like, and, again, I don't know -- generally speaking, in a patient who's been on Oxycontin for a long time, we try to wean him down as much as we can, because after surgery they're going to have pain, and if they're flooding their body with narcotics before surgery and then you're trying to treat pain with narcotics after surgery, a lot of times it's really hard to manage their pain.
So we try to, in general, any of the

chronic pain patients that are on long-term narcotics, we try to get them weaned down as much as we can or put on a less stronger medicine so that when they do have post-operative pain, we got some way of controlling it.
Q. Do you recall any discussions with Dr. Otaka, telling Dr. Otaka that Mr. Backman should reduce his Oxycontin use before the surgery?
A. I don't remember anything specifically. I could have. I don't remember.
Q. Would the level of Mr. Backman's Oxycontin use in December 2001, would that have prevented you from operating on him?
A. Again, the problem is trying to -- he was on big, pretty heavy doses. It would have been hard to do surgery on him. I mean, it would have been hard to control pain post-operatively.
I think if he needed pain -- if he had an emergency and he needed surgery, then we would just do it anyway, but for an elective surgery it would have been better to have him down.
Q. So at what, I guess, dosage of Oxycontin would you feel comfortable having Mr. Backman on before going forward with the surgery?
A. Well, that's hard to say.

MR. KAWAMURA: Let me just object. Incomplete hypothetical. Calls for speculation.
WITNESS: I would say, generally, you know, if they're on 20 milligrams twice a day, that would be nice.
BY MR. LEE:
Q. Is there a maximum amount that they could be on, as far as their daily Oxycontin or opiate dosage, before you would just have a cutoff and say, you know, you would not operate on that person?
A. No. There's really not a maximum dose, but you like to have them as low as -- ideally, you'd like to have them on no Oxycontin, realizing that it's not always possible.
Q. You mentioned that you learned of Mr. Backman's death from Dr. Otaka?
A. Yes.
Q. Do you recall what the conversation was with Dr. Otaka when he informed you that Mr. Backman had died?
A. I think he was -- actually, I was supposed to see him on the day he died, apparently. I think he was -- I may be wrong, but.
Q. At least on page 21 of your --
A. Yeah. He was supposed to see me on the

2nd, January 2nd, because, apparently, we had been playing scheduling and rescheduling and phone tag and patient missing appointments, et cetera, et cetera.
So we had him scheduled for the 2nd, and then I got this call from Dr. Otaka, you know, because the patient didn't show, and I got this call from him saying that he expired. I was sort of going what's going on?
Q. Do you recall what Mr. Backman's demeanor was like on November 14, 2001, when you saw him? Because at that time he already knew he could have the surgery, or at least it was approved by the Department of Labor. Was he happy; was he depressed; did he have some other complaints of emotional problems that you recall?
A. Again, I think he was probably upbeat. I mean, he wasn't -- I mean, he had a long struggle with trying to get stuff approved, and then when things finally got approved and the wheels were rolling, you know, and turning in the right direction for him, I think he was a little bit relieved.
He was still having pain, obviously, and he was still on chronic narcotics, but he was, seemed to be somewhat relieved, to my recollection.
Q. Did Mr. Backman ever tell you that he would

have surgery no matter what, because that was the only thing that would get his life back together?
A. I can't remember him saying that specifically. He could have said that, but I can't remember specifically.
That's why I wanted to make darn sure that, before operating and doing any kind of surgery, I wanted to make sure that I knew if he had something that needed surgery and make sure that the surgery was necessary before even considering something like that, which was why I reordered all the studies and I wanted to reassess him.
Q. The last letter I saw in your file from Mr. Kuwasaki was May 17, 2002, which is on page 119 of your records, and my only question is I was wondering whether you ever responded to this letter, because I didn't see one in your file?
A. Yeah, I don't remember doing anything like that.
Q. During the time Mr. Backman had seen you, did you ever reach a conclusion or suspect that he was addicted to his narcotic medications as opposed to just being physically dependent on them?
MR. KAWAMURA: Objection. Lacks foundation. Assumes facts not in evidence. Calls

for speculation.
A. Oxycontin is an addictive, physically-dependent-producing medication. Anybody who is on that stuff for more than a month is basically dependent on it.
But if I would have put -- I guess my statements in the patient's medical records were indicating narcotic dependence rather than addiction.
So I guess -- "dependence" means that they're taking this drug and, if you cold turkey, they're going to get sick. It's a little bit different from "addiction" which means that they really want to take this drug, they seek this drug, they have to have this drug for their own well being, as opposed to "dependence" which means that their body is just dependent on it. It's slight differentiation between the two.
BY MR. LEE:
Q. Were you aware of any high risk behavior by Mr. Backman that would lead you to suspect he was being, becoming addicted as opposed to just physically dependent on narcotic medications?
MR. KAWAMURA: Same objection and relevance.
A. I wasn't aware. I mean, I didn't talk to